

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

| | | |
|---------------------------|---|----------|
| UNITED STATES OF AMERICA, |) | |
| |) | |
| Plaintiff, |) | |
| |) | |
| v. |) | Case No. |
| |) | |
| VILLAGE OF ORLAND PARK, |) | Judge |
| |) | |
| Defendant. |) | |

CONSENT DECREE

WHEREAS, the plaintiff, the United States of America, on behalf of the United States Army Corps of Engineers (the “Corps of Engineers”), filed a complaint against defendant, Village of Orland Park, alleging that defendant violated Section 301(a) of the Clean Water Act (“CWA”), 33 U.S.C. § 1311(a);

WHEREAS, the complaint alleges that defendant violated CWA Section 301(a) by causing fill material to be discharged into a navigable waters of the United States on approximately 450 feet of property located behind Winding Creek Drive, in Orland Park, Cook County, Illinois, legally described as Southeast Quarter of Section 30, Township 36 North, Range 12 East (“the site”);

WHEREAS, the complaint alleges that the discharge of fill material was without authorization by the Corps of Engineers and is more fully described in the complaint in this case;

WHEREAS, the complaint seeks: (1) an order requiring the defendant to engage a qualified environmental consultant knowledgeable in stream morphology to prepare a restoration plan for the impacted area in the creek that meets the Corps of Engineers’ approval; (2) an order requiring the defendant to implement the restoration plan, as approved by the Corps of Engineers, and monitor the restoration as provided in the approved restoration plan; (3) an order requiring the defendant to

remove all pipes and flood plain fill material from the Marley Creek tributary, to re-establish the pre-disturbance creek channel, and to seed and stabilize the creek banks; (4) an award to plaintiff of an appropriate civil penalty pursuant to the terms of 33 U.S.C. §§ 1319(b) and 1344 for each day on which each violation occurred; (5) an award to plaintiff for its costs in connection with this action; and (6) an award to plaintiff of such further relief as this court deems just;

WHEREAS, this consent decree is intended to constitute a complete and final settlement of the United States' claims under the CWA set forth in the complaint regarding the site;

WHEREAS, the United States and defendant agree that settlement of this case is in the public interest and that entry of this consent decree is the most appropriate means of resolving the United States' claims for injunctive relief and civil penalties under the CWA against defendant in this case; and

WHEREAS, the court finds that this consent decree is a reasonable and fair settlement of the United States' claims against defendant in this case, and that this consent decree adequately protects the public interest in accordance with the CWA and all other applicable federal law.

THEREFORE, before the taking of any testimony and upon consent of the parties hereto by their authorized representatives, it is hereby ORDERED, ADJUDGED and DECREED as follows:

I. Jurisdiction and Venue

1. This court has jurisdiction over the subject matter of these actions and over the parties pursuant to 28 U.S.C. §§ 1331, 1345, and 1355, and Section 309(b) of the CWA, 33 U.S.C. § 1319(b).

2. Venue is proper in the Northern District of Illinois pursuant to CWA Section 309(b), 33 U.S.C. § 1319(b), and 28 U.S.C. §§ 1391(b) and (c), because the subject property is located in this district, and the causes of action alleged herein arose in this district.

3. The complaint states claims upon which relief can be granted pursuant to Sections 301, 309 and 404 of the CWA, 33 U.S.C. §§ 1311, 1319 and 1344.

II. Applicability

4. The obligations of this consent decree shall apply to and be binding upon defendant, its agents, employees and servants, and successors and assigns and any person, firm, association or corporation who is, or will be, acting in concert or participation with the defendant whether or not such person has notice of this consent decree. In any action to enforce this consent decree defendant shall not raise as a defense the failure of any of its agents, employees, successors or assigns or any person, firm or corporation acting in concert or participation with defendant, to take any actions necessary to comply with the provisions hereof.

5. The transfer of ownership or other interest in the site shall not alter or relieve defendant of its obligations to comply with all of the terms of this consent decree. At least fifteen (15) days prior to the transfer of ownership or other interest in the site, defendant shall provide written notice and a true copy of this consent decree to its successors in interest and shall simultaneously notify the Corps of Engineers and the United States Department of Justice at the addresses specified in Section IX below that such notice has been given. As a condition to any such transfer, defendant shall reserve all rights necessary to comply with the terms of this consent decree.

III. Scope of Consent Decree

6. This consent decree shall constitute a complete and final settlement of all civil claims for injunctive relief and civil penalties alleged in the complaint against defendant under CWA Section 301 concerning the site.

7. It is the express purpose of the parties in entering this consent decree to further the objectives set forth in CWA Section 101, 33 U.S.C. § 1251. All obligations in this consent decree or resulting from the activities required by this consent decree shall have the objective of causing defendant to achieve and maintain full compliance with, and to further the purposes of, the CWA.

8. Except as in accordance with this consent decree, defendant and its agents, successors and assigns are enjoined from discharging any pollutant into waters of the United States, unless such discharge complies with the provisions of the CWA and its implementing regulations.

9. This consent decree is not and shall not be interpreted to be a permit or modification of any existing permit issued pursuant to Sections 402 or 404 of the CWA, 33 U.S.C. §§ 1342 or 1344, or any other law. Nothing in this consent decree shall limit the ability of the Corps of Engineers to issue, modify, suspend, revoke or deny any individual permit or any nationwide or regional general permit, nor shall this consent decree limit the EPA's ability to exercise its authority pursuant to Section 404(c) of the CWA, 33 U.S.C. § 1344(c).

10. This consent decree in no way affects or relieves defendant of its responsibility to comply with any applicable federal, state, or local law, regulation or permit.

11. This consent decree does not relieve defendant of liability for any violations of the Clean Water Act other than those alleged in the complaint.

12. This consent decree in no way affects the rights of the United States as against any person not a party to this consent decree.

13. The United States reserves any and all legal and equitable remedies available to enforce the provisions of this consent decree and applicable law.

14. Nothing in this consent decree shall constitute an admission of fact or law by any party.

IV. Specific Provisions

Civil Penalties

_____15. Defendant shall pay a civil penalty to the United States in the amount of ten thousand dollars (\$10,000), within 30 days of entry of this consent decree.

16. Defendant shall make the above-referenced payment by FedWire Electronic Funds Transfer (“EFT” or wire transfer) to the U.S. Department of Justice account in accordance with current electronic funds transfer procedures, referencing U.S.A.O. file number (2003V002834). Payment shall be made in accordance with instructions provided to defendant by the Financial Litigation Unit of the United States Attorney’s Office for the Northern District of Illinois. Any payments received by the Department of Justice after 3:00 P.M. (Central Time) will be credited on the next business day.

17. Upon payment of the civil penalty required by this consent decree, defendant shall provide written notice to the United States Attorney’s Office for the Northern District of Illinois, that such payment was made in accordance with Paragraph 15.

18. Civil penalty payments pursuant to this consent decree are penalties within the meaning of Section 162(f) of the Internal Revenue Code, 26 U.S.C. § 162(f), or of 26 C.F.R. § 1.162-21 and are not tax deductible expenditures for purposes of federal law.

Restoration, Mitigation and Preservation

19. By June 1, 2004, defendant shall perform the following:

A. Remove the entire length of pipe and all other materials previously installed by the Village;

B. Cut new swale to replace the pre-existing channel following the Village of Orland Park Brookhills Subdivision Drainageway Restoration Plan done by Christopher B. Burke Engineering (CBBE) dated August 5, 2003 (“Restoration Plan,” attached hereto as Exhibit A) and drawing dated August 22, 2003 (attached hereto as Exhibit B);

C. Install “Natural Area–No Mow” signs around the area designated as “Outlot C,” as depicted in the drawing attached hereto as Exhibit B;

D. Seed the entire area designated as “Outlot C” in accordance with the Restoration Plan (Exhibit A) and the seeding plan contained in Appendix A to the Restoration Plan; and

E. Conduct management and monitoring as provided in the Restoration Plan (Exhibit A).

20. Defendant shall not mow, cut, clear, cultivate, dredge, excavate, farm, fill, dewater, drain or otherwise disturb in any manner whatsoever the portion of the site designated as “Outlot C” in the attached exhibits, and defendant shall not allow others, such as Village residents, to mow, cut,

clear, cultivate, dredge, excavate, farm, fill, dewater, drain or otherwise disturb in any manner whatsoever the portion of the site designated as “Outlot C” in the attached exhibits.

21. At the completion of the grading work, defendant shall notify the Corps of Engineers, who will conduct an inspection. If the inspection determines that the actions described above were not properly conducted, the Corps of Engineers will notify defendant of additional corrective measures that are needed, and within 30 days of receiving such notification defendant will complete the additional corrective actions as directed by the Corps of Engineers.

22. Compliance with this consent decree and completion of defendant’s obligations hereunder shall be determined by the Corps of Engineers as provided on page 3 of the Restoration Plan (Exhibit A).

V. Stipulated Penalties

23. After entry of this consent decree, if defendant fails to timely fulfill any requirement of the consent decree, it shall pay a stipulated penalty to the United States for each violation of each requirement of this consent decree as follows:

- | | | |
|----|--|--------------------|
| A. | For Day 1 up to and including Day 30 of non-compliance | \$200.00 per day |
| B. | For Day 31 up to and including Day 60 of non-compliance | \$1,000.00 per day |
| C. | For Day 61 and beyond | \$2,000.00 per day |

Such payments shall be made without demand by the United States, on or before the last day of the month following the month in which the stipulated penalty accrued.

VI. Addresses

24. All notices and communications required under this Consent Decree shall be made to the parties through each of the following persons and addresses:

A. To the Corps of Engineers:

Mitchell A. Isoe
Chief, Regulatory Branch
111 N. Canal
Suite 600
Chicago, Illinois 60606

B. To the United States Department of Justice

Lara S. Kaufmann
Assistant United States Attorney
219 S. Dearborn St.
5th Floor
Chicago, Illinois 60604

C. To Defendant Village of Orland Park:

Honorable David McLaughlin, Mayor
Village of Orland Park
14700 S. Ravinia Avenue
Orland Park, Illinois 60462

Richard B. Boehm, Village Manager
Village of Orland Park
14700 S. Ravinia Avenue
Orland Park, Illinois 60462

E. Kenneth Friker
Klein, Thorpe & Jenkins, Ltd.
20 North Wacker Drive
Suite 1660
Chicago, IL 60606-2903

VII. Costs of Suit

25. Each party to this consent decree shall bear its own costs and attorneys' fees in this action. Should defendant subsequently be determined by the court to have violated the terms or conditions of this consent decree, defendant shall be liable for any costs or attorneys' fees incurred by the United States in any action against defendant for noncompliance with or enforcement of this consent decree.

VIII. Public Comment

26. The parties acknowledge that after the lodging and before the entry of this consent decree, final approval by the United States is subject to the requirements of 28 C.F.R. § 50.7, which provides for public notice and comment. The United States reserves the right to withhold or withdraw its consent to the entry of this consent decree if the comments received disclose facts which lead the United States to conclude that the proposed judgment is inappropriate, improper, or inadequate. Defendant agrees not to withdraw from, oppose entry of, or to challenge any provision of this consent decree, unless the United States has notified defendant in writing that it no longer supports entry of the consent decree.

IX. Continuing Jurisdiction of the Court

27. This court shall retain jurisdiction over this action in order to enforce or modify the consent decree consistent with applicable law or to resolve all disputes arising hereunder as may be necessary or appropriate for construction or execution of this consent decree. During the pendency of the consent decree, any party may apply to the court for any relief necessary to construe and effectuate the consent decree.

X. Final Judgment

28. Upon its entry by the court, this consent decree shall have the force and effect of a final judgment.

XI. Termination

29. Except for Paragraph 8 and Paragraph 20, this Consent Decree may be terminated by either of the following:

A. Defendant and the United States may at any time make a joint motion to the Court for termination of this Decree or any portion of it; or

B. Defendant may make a unilateral motion to the Court to terminate this Decree after each of the following has occurred:

1. Defendant has obtained and maintained compliance with all provisions of this Consent Decree and the CWA for twelve (12) consecutive months;

2. Defendant has paid all penalties and other monetary obligations hereunder and no penalties or other monetary obligations are outstanding or owed to the United States;

3. Defendant has certified compliance pursuant to subparagraphs 1 and 2 above to the Court and all Parties; and

4. Within forty-five (45) days of receiving such certification from defendant, the Corps of Engineers has not contested in writing that such compliance has been achieved. If the Corps of Engineers disputes defendant's full compliance, this Consent Decree shall remain in effect pending resolution of the dispute by the Parties or the Court.

IT IS SO ORDERED.

Dated and entered this _____ day of _____, 2003.

United States District Judge

ON BEHALF OF THE UNITED STATES:

PATRICK J. FITZGERALD
United States Attorney

By:

LARA S. KAUFMANN
Assistant United States Attorney
219 South Dearborn Street
Chicago, Illinois 60604
(312) 353-1996

Dated: _____

ON BEHALF OF Defendant:

E. KENNETH FRIKER
Klein, Thorpe & Jenkins, Ltd.
20 North Wacker Drive
Suite 1660
Chicago, IL 60606-2903

Dated: _____

DANIEL J. McLAUGHLIN, Village Mayor

Dated: _____

RICHARD B. BOEHM, Village Manager

Dated: _____